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PEDIATRIC CLINIC, L.L.C.

Medical Arts Center of East Alabama

122 North 20th Street, Bldg. 23

Opelika, AL 36801-5442

Telephone

(334) 749-8121

Facsimile

(334) 749-6166

PEDIATRICS

AVID DRUHAN, M.D. FAAP

PEDIATRICS & ADOLESCENTS

ERON B. INGLE, JR., M.D. FAAP

DAVID B. SMALLEY, M.D. FAAP

G. RANDALL JONES, M.D. FAAP

LARRY E. THORNE, M.D. FAAP

KATHERINE K. NICHOLS, M.D. FAAP

PEDIATRICS & ADOLESCENTS

SARA L. SMITH T. M.D. FAAP

ASHLEY C. DAVIS, M.D.

LISA D. YOUNG, M.D. FAAP

PEDIATRICS, ADOLESCENTS &

ENDOCRINOLOGY

LINDA H. ANZ, M.D. PAAP

July 5, 2001

Yarbi Cound

Lee County Department of Human Resources

P.O. Box 2425

Opelika, AL 36803-2425



Dear Ms. Counts:

I saw Autumn McLees on June 25, 2001. She was brought in by her grandmother and her mother. The chief complaint was that the child had been molested three years ago by the mother's previous boyfriend, Lee. They told me at that time the child was too afraid to tell anyone about the incident and she told her mother that she was hurt on the monkey bars. The mother had since moved to Virginia and the story came out that the previous boyfriend had abused the child and her sister. Autumn told me "He stuck his private part in my private part". She further stated that they were home alone with her sister watching TV. He took her and her sister and did it to them. He took them to a back bedroom, and again, they were too afraid at that time to tell anyone.

Physical exam was normal except for the vaginal area. The child was a Tanner one and no intact hymen on the right in the posterior portion. There was a notch on the left and the right the hymen was more than one centimeter in diameter, wide open and gaping. Please see accompanying diagram.

I feel that with the detail of the child's history and the abnormal physical exam, that this represents sexual abuse in the class three to four range. Apparently the child has also been examined by a forensic specialist in Virginia, and I agree with his or her assessment. It would be helpful to have that record as well.

Please feel free to contact me if there are any further questions.

Very truly yours,

Linda H. Anz, M.D.

**DEFENDANT'S
EXHIBIT**

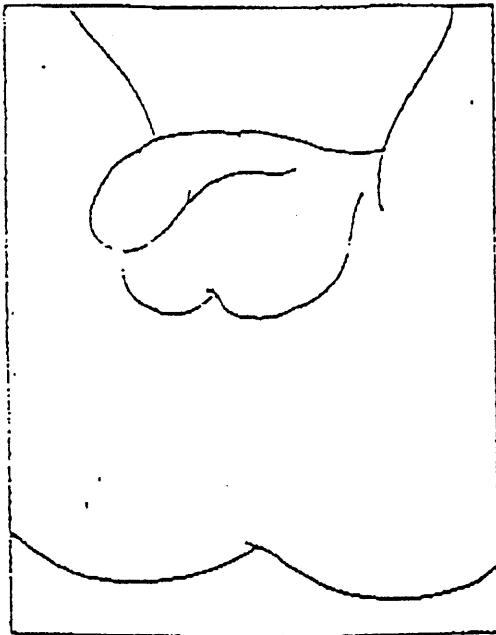
#1

Autumn Nichols

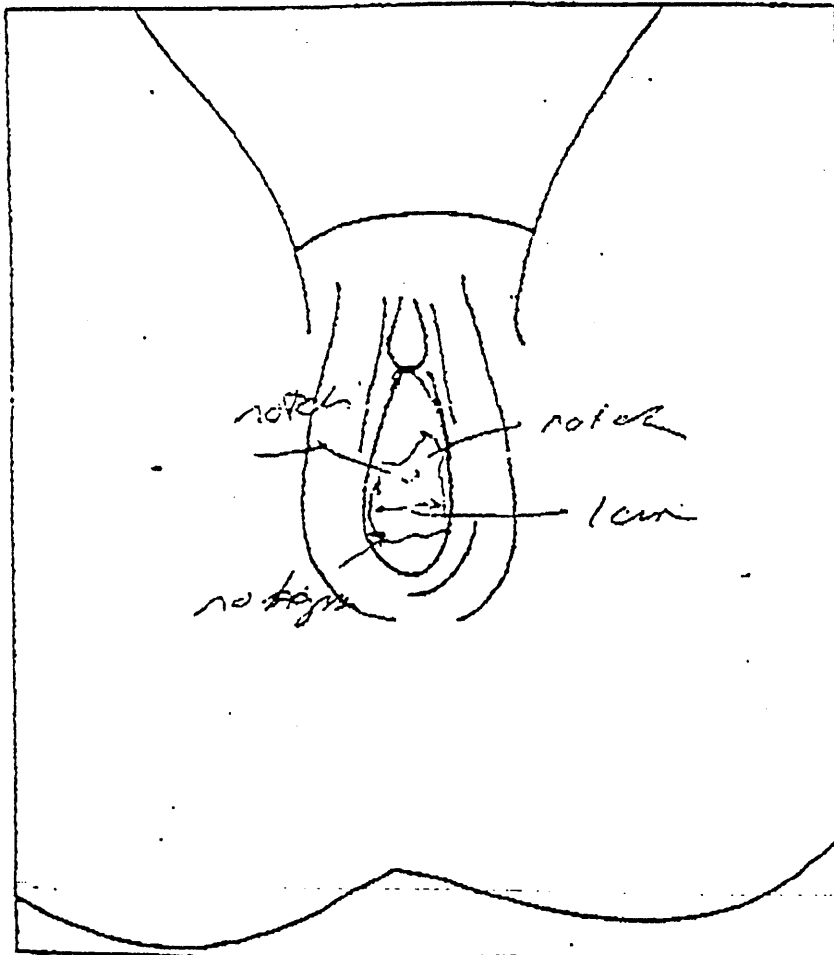
Date: 6/25/01

0000

SHAPE OF ANUS AND ANY LESIONS ON GENITALIA, PERINEUM, AND BUTTOCKS BUTTOCKS



V SHAPE OF HYMEN AND ANUS AND ANY LESIONS ON GENITALIA, PERINEUM, OR BUTTOCKS



Type of hymen:
☐ annular
☐ redundant
☐ crescent
☐ estrogenized
☐ other _____

Hymenal edges
 explored with a
 swab?
☐ Y ☐ N

Woods lamp used: ☐ Y ☐ N (mark areas on diagram)
 Fluorescence noted: ☐ Y ☐ N

TRIRPT1.RPT

CENTRAMAX.M

Triage Call Documentation Report

Page 0091

Date: 03/07/1999

Patient Name: AUTUMN MCLEES

Call Date: 03/07/1999 20:3

Patient Name: AUTUMN MCLEES

PCP: Katherine K. Nichols

Patient Addr: 98 JANETTE STREET

Spec:

PROVIDER#:

PT.FIRST#:

Age: 006 yrs. Sex: F

CHART#:

Opelika AL 36801

Phone: Day (205) Eve. 334-749-1086

Birthdate: 11/04/1992

Insurance: Alabama Medicaid MGD Care

Operator: Krystin Lewis RN

PRESENTING PROBLEM

PT1

FELL ON BALANCE BEAM

NURSING ASSESSMENT

MOM STATES THAT CHILD FELL ON A BALANCE BEAM FRI AND HAS HAD SOME VAGINAL BLEEDING EVER SINCE. THEY ARE AWARE OF THIS AT THE OFFICE AND CHILD HAS A RETURN VISIT TOM. MOM STATES THAT THE BLEEDING HAS NOT INCREASED IN INTENSITY--JUST WORRIED BC CHILD NOW HAS A TEMP OF 103. WONDERS IF IT WOULD BE OK TO GIVE HER APAP. CHILD HAS NO OTHER NEW SYM TO NOTE.

GUIDELINE USED: Fever (Pediatric)

! .SON FOR DISPOSITION:

All other patients (Reason: routine fever and all triage questions negative)

RECOMMENDED DISPOSITION: Home Care With Follow Up prn

PATIENT/CALLER UNDERSTANDING

Patient/care giver was able to repeat the instructions in his or her own words.

PATIENT/CALLER INTENDED ACTION

Patient/Caregiver will comply with recommended disposition.

OTES

INST MOM THAT APAP WOULD BE FINE--SHE WILL KEEP HER APPT FOR TOM.

EPSDT

This patient Autumn Noles DOB 1/1/ has had an EPSDT screening on 12/18/98 and has been approved for more visits than the 14 allowed by Medicaid. This referral is good for one year. We can bill Medicaid for extra days if you see this patient for any of the following conditions:

Allergic Rhinitis

FB (L) Canal

Please mark "EPSDT" on the front of the charge ticket so that the billing office will know that you are billing for the extra visits and not the routine sick visits.

(Please leave this as the front page of the chart.)

REFERRED FROM:

Mary Moron

EAMC

LCHD

Children's

UAB

Alabama Council on Human Relations

10

EAMC

LCHD

CHIL

UAB

ACHR

TRIRPT1.RPT

CENTRAMAX.M

Triage Call Documentation Report
Date: 03/07/1999

Call Date: 03/07/1999 20:3

0098

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Patient Addr: 98 JANETTE STREET

PCP: Katherine K. Nichols

Spec:

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PT.FIRST#:

Age: 006 yrs. Sex: F

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Operator: Krystin Lewis RN

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Opelika AL 36801
Phone: Day (205) Eve. 334-749-1086
Birthdate: 11/04/1992
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PRESENTING PROBLEM

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WONDERS IF IT WOULD BE OK TO GIVE HER APAP. CHILD HAS NO OTHER NEW SYM
TO NOTE.

GUIDELINE USED: Fever (Pediatric)

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Patient/Caregiver will comply with recommended disposition.

NOTES

INST MOM THAT APAP WOULD BE FINE--SHE WILL KEEP HER APPT FOR TOM.

Pediatric Clinic, 122 N 20th St #23, Opelika, AL 36801 (334) 749-8121

NAME:

Autumn McLees

114-92

Date	Temp	Age	Weight	Length	Immunization
MONDAY MAR 03 1999	101.0	6yr 4 1/2			

vev private area - still bleeding,
 tpev x 2 days

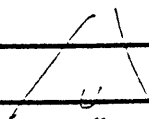
no purulent acc

115 Acc + 2mi @ 11 @ 3mdd - 11

115 Acc + 2mi -

no lch.

150



deep clasp small int dried
 blood Acc but has
 no odor.

11 Long viridillness / Viridill Lac.

11 Absent - soon 6m 11/10/04
 Sitz Bath 11/10/04

Procton out 11/10/04

11/10/04, 115 or 11/10/04

11/10/04

Pediatric C

122 N 20th St #23, Opelika, AL 3

1 (334) 749-8121

NAME:

Athurin McLees

Date	Temp	Age	Weight	Length	Immunization
1-10-99:					

Pl. 1st SK referral dated 12-18-98. SK

Phone Consult

MAR 05 1999

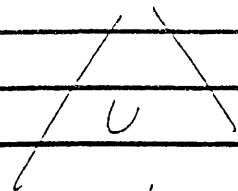
887-2577

Fell on playground on Wed. (at school) mom noted blood on toilet seat & on her panties this morning. Mom examined child, a fissure was noted in vag-rectal area. Child denies pain, mom did not see any cuts, scratches or any reason for her to bleed. Report made. B. Hallum

DATE	TEMP	AGE	WGT	LEN	HEALTH
FRIDAY MAR 05 1999	100.4	6 yr	42		
	80.				

fell on balance beam and is bleeding

#2



Large bleeding L.C.
SKYI bleed-

Ref. to N. L. Tsey

Pl. 1st SK referral dated 12-18-98. SK

Patient 1st

EPSDT REFER

L FOR SERVICES

0098

Health Care Close To Home

Date of screening:

WEDNESDAY DEC 16 1998

TO BE COMPLETED BY REFERRAL PROVIDER

Name and address of CONSULTANT ENT		Name, address & telephone number of screening provider PEDIATRIC CLINIC #23 MEDICAL ART CENTER PELIKA, AL 36502	
Provider phone number		Screening provider no. and signature 391000300 [Signature]	
Appointment date & time		Medical record number	
Name of patient Curtis McLeese		Date of Birth 11-4-72	
Patient address		Medicaid number 000 395 11 127101	
Reason for referral FBC Ear		Phone number	
Additional health problems			
This referral is valid for 12 months from date of screening. (maximum of 12 months)			
Printed Name and title of PMP J. D. [Signature]		Referral/PMP Provider No. 01944	
Signature of PMP			
TO THE REFERRING PROVIDER: FORWARD WHITE AND YELLOW COPIES TO CONSULTANT. RETAIN PINK COPY FOR YOUR FOLLOW-UP.			

Date of Examination or service

Diagnosis/es

CONSULTANT'S REPORT - Please write below or attach report to assure payment: Include summary of treatment rendered, treatment plan and duration, and estimated number of visits.

Printed Name and title of consultant

Signature of consultant

0092

STATE OF ALABAMA

LEE COUNTY

The Court Reporter having certified that the reproduction of State's Exhibit No. 1 is difficult or impractical, I hereby attach said State's Exhibit No. 1 to this page of the transcript and certify the same as a part of the record.

Corinne Hurst
Corinne Hurst, Circuit Clerk
Lee County

0098 4c

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July 5, 2001

Yarbi Count
Lee County Department of Human Resources
P.O. Box 2425
Opelika, AL 36803-2425



Dear Ms. Counts:

I saw Autumn McLees on June 25, 2001. She was brought in by her grandmother and her mother. The chief complaint was that the child had been molested three years ago by the mother's previous boyfriend, Lee. They told me at that time the child was too afraid to tell anyone about the incident and she told her mother that she was hurt on the monkey bars. The mother had since moved to Virginia and the story came out that the previous boyfriend had abused the child and her sister. Autumn told me "He stuck his private part in my private part". She further stated that they were home alone with her sister watching TV. He took her and her sister and did it to them. He took them to a back bedroom, and again, they were too afraid at that time to tell anyone.

Physical exam was normal except for the vaginal area. The child was a Tanner one and no intact hymen on the right in the posterior portion. There was a notch on the left and the right the hymen was more than one centimeter in diameter, wide open and gaping. Please see accompanying diagram.

I feel that with the detail of the child's history and the abnormal physical exam, that this represents sexual abuse in the class three to four range. Apparently the child has also been examined by a forensic specialist in Virginia, and I agree with his or her assessment. It would be helpful to have that record as well.

Please feel free to contact me if there are any further questions.

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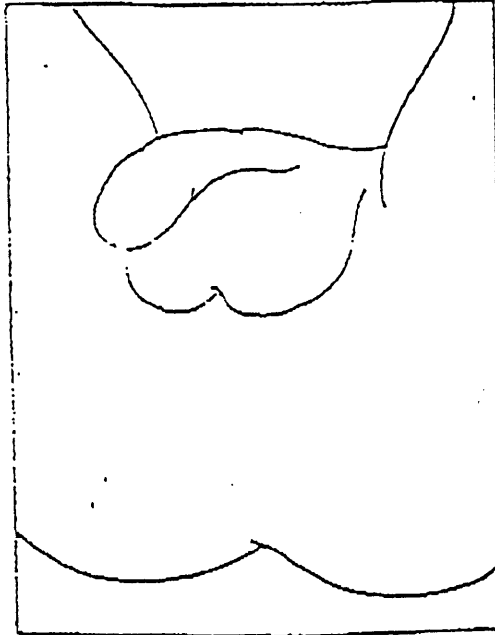
**STATE'S
EXHIBIT**

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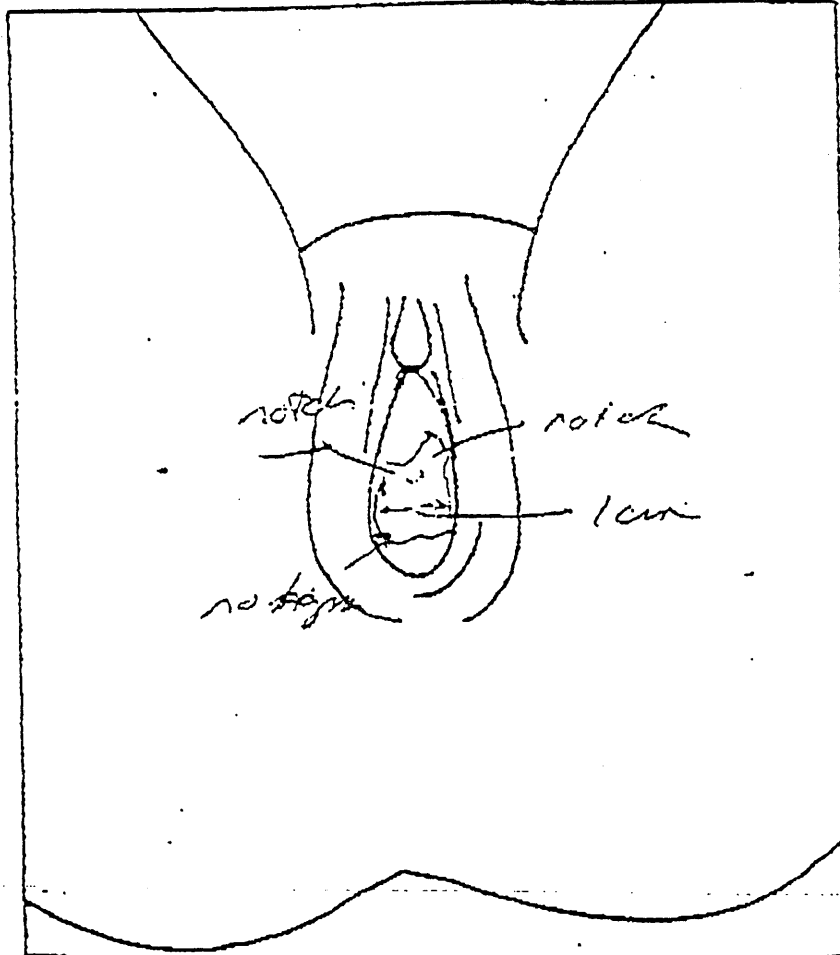
Autism Nelson

Date: 6/25/01

(S) E OF ANUS AND ANY LESIONS ON GENITALIA, PERINEUM, AND BUTTOCKS BUTTOCKS



W SHAPE OF HYMEN AND ANUS AND ANY LESIONS ON GENITALIA, PERINEUM, OR BUTTOCKS



Type of hymen:
☐ annular
☐ redundant
☐ crescent
☐ estrogenized
☐ other _____

Hymenal edges
 explored with a
 swab?
☐ Y ☐ N

Woods lamp used: ☐ Y ☐ N (mark areas on diagram)
 Fluorescence noted: ☐ Y ☐ N

STATE OF ALABAMA

LEE COUNTY

The Court Reporter having certified that the reproduction of State's Exhibit No. 2 is difficult or impractical, I hereby attach said State's Exhibit No. 2 to this page of the transcript and certify the same as a part of the record.

Corinne Hurst
Corinne Hurst, Circuit Clerk
Lee County

0101

DATE : 06/25/01
VICTIM : Autumn McLees
SUBJECT: Forensic Interview

On 06/25/01, at approximately 1:00 p.m., I met with Autumn McLees, her mother, Dawn Beheshtzaden, her step-maternal grandmother, Princess Hepner, Lee Co. DHR social worker, Yarbi Cound, and Opelika Police Department Det. Shane Healey at the Child Advocacy Center in reference to a sexual abuse report. The report concerned Autumn disclosing that Lee Kirby, her mother's ex live-in boyfriend, had touched her private parts. The incident occurred approximately two years ago when the family was living in Opelika. The family has moved to Virginia.

Autumn is 8 years old and just completed the second grade. Autumn said she went to school at Butts Road Primary School in Chesapeake, Virginia. Autumn said she had two teachers, Ms. Johnson and Ms. Ranefelt. I asked Autumn her favorite subject in school. Autumn said she liked art the best. I asked Autumn if there was anything she didn't like about school. Autumn said she liked everything about school. I asked Autumn who all she lives with. Autumn said she lives with her grandma, her Papa, her mom, two sisters, Lillian and Elizabeth, and her two cousins, Robbie and Carlton. I asked Autumn if she knew why she had been brought to the center to talk to me. Autumn said it was about some bad things Lee did to her when they lived in Opelika. I told Autumn that was what we would be talking about. I then told Autumn that we would only talk about things that had really happened and not pretend things. I used several examples in explaining truth and lies and Autumn responded appropriately and said she would tell the truth. I asked Autumn who Lee was. Autumn said Lee lived with them when they lived in Opelika and he was her mom's boyfriend. I told Autumn to tell me everything she could remember about what happened. Autumn said that Lee did some bad things to her and her sister, Lillian. Autumn said that Lee choked her until she passed out. I told Autumn to tell me more about that. Autumn said she couldn't remember why Lee did that or anything else about it. Autumn said a friend of her mother's had given her mother a pair of handcuffs for a birthday or Christmas present. Autumn said Lee put the handcuffs on her hands behind her back and then he would dunk her in the water in the bathtub. Autumn said Lee would hold her head under the water in the bathtub. Autumn said Lee did that to Lillian but most of the time he just did it to her. Autumn said Lee would hold her head under the water in the toilet and then would flush the toilet. Autumn said Lillian told her that Lee did that to her too. Autumn said she believed Lee did that to Lillian because she would hear Lillian screaming in the bathroom. I asked Autumn if there was anything else Lee did to her. Autumn said Lee stuck his private part in her private part. I asked Autumn to point to her private part that she was talking about. Autumn pointed to her butt. I asked Autumn if she had a name for that part of her body. Autumn said she thought it was called a gluteus maximus. I asked Autumn if she had another name for it and she said her back private part. I asked Autumn if she had name for Lee's private part and Autumn said she called it a winkie. I asked Autumn if Lee put his winkie against her back private part or inside and she said he put it inside and it hurt her. I asked Autumn if her clothes were on or off when this happened. Autumn said Lee would tell her to take her clothes off and she did. Autumn said she took all her clothes off even her panties. I asked Autumn if anything happened to Lee's clothes. Autumn said Lee would

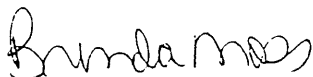
**STATE'S
EXHIBIT**

-H 2-

take all his clothes off. Autumn said Lee wore boxer underwear most of the time. I asked Autumn if Lee did anything else with his winkie. Autumn said Lee put his winkie inside her mouth. I asked Autumn if Lee's winkie felt hard, soft or some other way. Autumn said it felt hard. I asked Autumn if she felt anything come out of Lee's winkie when it was inside her mouth and she said no. I asked Autumn where this happened. Autumn said it happened when they were all living in Opelika in a trailer. Autumn said the trailer was past Golden Corral. I asked Autumn who all would be at home when this happened. Autumn said it always happened when her mom was at work and she, Lillian and Elizabeth would be at home with Lee. Autumn said Lee kept them while her mom worked. I asked Autumn if anything else happened. Autumn said one time Lee had his winkie inside her back private part and it slipped and went inside her pie. I asked Autumn what her pie was. Autumn said it was her front private part and she pointed to her vaginal area. Autumn said Lee put her in the bath tub. Autumn said Lee knew he had hurt her because there was blood coming out of her pie. Autumn said when Lee saw the blood he put her in the bath tub. I asked Autumn if she told anyone about that. Autumn said she told her mom that she had fallen off the balance beam at school. Autumn said that was what Lee told her to tell her mom. I asked Autumn if she went to the doctor because of this. Autumn said she didn't think she did but she couldn't remember for sure. Autumn said she didn't think Lee meant to hurt her pie but his winkie slipped when he had it inside her back private part. I asked Autumn what grade she was in when all this happened. Autumn said she was in kindergarden. I asked Autumn if she remembered the name of her school and she said no. I asked Autumn if there was anything else she could remember. Autumn said one time Lee slammed her head against the wall in the trailer. Autumn said she didn't know why Lee did that but it left a hole in the wall. Autumn said that happened in her bedroom. Autumn said she shared a bedroom with Lillian and Elizabeth. I asked Autumn if Lee put his winkie inside her back private part one time, two times, or a bunch of times and she said a bunch of times. I asked Autumn if Lee put his winkie inside her mouth one time, two times, or a bunch of times and she said a bunch of times. I asked Autumn if Lee put his winkie inside her pie one time, two times, or a bunch of times and she said that only happened one time. Autumn said Lee's full name was William Lee Kirby. Autumn said her mother told her that today. I asked Autumn if there was anything else she could remember. Autumn said Lee would kick and punch her and Lillian and leave marks and bruises on their legs and belly. I asked Autumn if that happened one time, two times, or a bunch of times and she said a bunch of times. I asked Autumn if there was anything else she could remember and she said no. Autumn said she wanted me to know that everything she had told me was the truth. I thanked Autumn for talking to me and ended the interview.

Interview Began: 1:10 p.m.

Interview Ended: 1:55 p.m.



Brenda Moss

Forensic Interviewer

Child Advocacy Center of East Al., Inc.

STATE OF ALABAMA

LEE COUNTY

The Court Reporter having certified that the reproduction of State's Exhibit No. 3 is difficult or impractical, I hereby attach said State's Exhibit No. 3 to this page of the transcript and certify the same as a part of the record.

Corinne Hurst
Corinne Hurst, Circuit Clerk
Lee County

DATE: 06/25/01
VICTIM: Lillian Judith McLees
SUBJECT: Forensic Interview

On 06/25/01, at approximately 1:00 p.m., I met with Lillian McLees, her mother, Dawn Beheshtzaden, her step-maternal grandmother, Princess Hepner, Lee Co. DHR social worker, Yarbi Cound, and Opelika Police Department Det. Shane Healey at the Child Advocacy Center in reference to a sexual abuse report. The report concerned Lillian disclosing that William Lee Kirby, her mother's ex live-in boyfriend, had touched her private parts. The incident occurred approximately two years ago when the family was living in Opelika. The family has moved to Virginia.

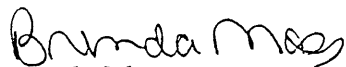
Lillian is 10 years old and just completed the 4th grade at Butts Road Intermediate School. Her teacher was Mr. Birkie. I asked Lillian about her favorite subject. Lillian said she liked math the best and didn't like English and reading. I asked Lillian who all she lives with. Lillian said she lives with her grandparents, Princess and Robert Hepner, her sisters, Autumn and Elizabeth, and her cousins, Robbie and Carlton. Lillian said her mom and step-dad live in Chesapeake but they visit each other a lot. I asked Lillian if she knew why she had been brought to the center to talk to me. Lillian said it was about the bad things Lee Kirby did to her. I told Lillian that was what we would be talking about. I then explained the rules to Lillian as follows: you know more than I about what happened; always tell the truth; no guessing; if you don't know or don't remember, say so; if I repeat a question, it doesn't mean your first answer was wrong; and, you can correct me if I get something wrong. Lillian said she understood and would follow the rules. I told Lillian to tell me everything she could remember about what happened. Lillian said Lee hurt her and touched her in ways she didn't like. Lillian said it didn't feel right when he touched her. I asked Lillian where Lee touched her. Lillian said he touched her private parts, her pie and her butt. Lillian said her pie was her front private part and her butt was her back private part. I asked Lillian where this happened. Lillian said it happened at their trailer when they were all living in Opelika. Lillian said it happened in the living room and in her mom's bedroom. I asked Lillian if her clothes were on or off. Lillian said Lee told her to take her clothes off. Lillian said she took all her clothes off. I asked Lillian if anything happened to Lee's clothes. Lillian said Lee took all his clothes off and then touched her privates with his hands and his private part. I asked Lillian if she had name for Lee's private part and she said it was his penis. Lillian said Lee put his penis inside her butt and inside her pie. I asked Lillian if Lee did anything else with his penis. Lillian said Lee put his penis inside her mouth. I asked Lillian what his penis felt like. Lillian said it was hard and felt awful. I asked Lillian if she felt anything come out of Lee's penis when it was inside her mouth. Lillian said something came out and it was white but she didn't know what it was. I asked Lillian who all was at home when this happened. Lillian said her sisters, Autumn and Elizabeth, were there and her mother would be at work. I asked Lillian if Lee put his penis inside her butt one time, two times, or a bunch of times and she said that happened a bunch of times. I asked Lillian if Lee put his penis inside her pie one time, two times, or a bunch of times and she said it happened a bunch of times. I asked Lillian if Lee put his penis inside her mouth one time, two times, or a bunch of times and she said a bunch of times. Lillian said after he touched her that way, he would

0105

put her in the bathtub and bath her. I asked Lillian if Lee did anything to her when she was in the bathtub. Lillian said sometimes Lee would hold her head under the water and it would scare her. Lillian said Lee would spank her and Autumn and leave bruises on them for days. I asked Lillian if Lee ever said anything to her when he was touching her in these ways and she said no, not that she could remember. I asked Lillian if she ever told anyone about this. Lillian said she remembered talking to Autumn about it. Lillian said she never told anyone until a while long ago. Lillian said she told her best friend, Jackie Newman, and then her counselor in Virginia. I asked Lillian what grade she was in when Lee did these things to her. Lillian said she was in the 2nd grade. Lillian said she went to a school in Opelika but she couldn't remember the name of the school. I asked Lillian if there was anything else she could remember and she said no. I thanked Lillian for talking to me and ended the interview.

Interview Began: 2:00 p.m.

Interview Ended: 2:40 p.m.



Brenda Moss

Forensic Interviewer

Child Advocacy Center of East Al., Inc.

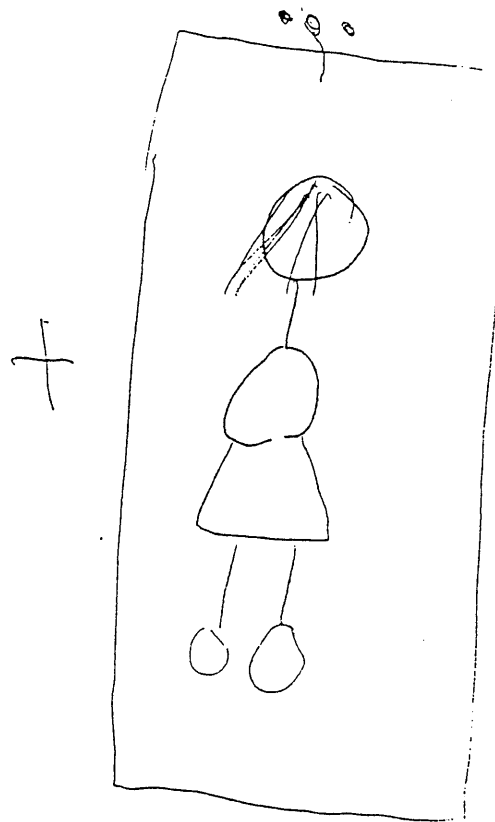
STATE OF ALABAMA

LEE COUNTY

The Court Reporter having certified that the reproduction of State's Exhibit No. 4 is difficult or impractical, I hereby attach said State's Exhibit No. 4 to this page of the transcript and certify the same as a part of the record.

Corinne Hurst
Corinne Hurst, Circuit Clerk
Lee County

0102



DURIE MILFORD DREW
BATHTUB + SPIGOT -

CHILD (AUTUMN) DREW
WHERE HER BODY WAS
A X IS WHERE LEE
WAS BESIDE THE
TUB,
CHILD IS "LAYING
ON MY TUMMY",



MAN'S
PICTURE OF PRIVATE



LEE'S BODY
WITH
PRIVATE
PART

DRAWN BY AUTUMN McLEES

OCT 11 2

STATE'S
EXHIBIT

0108

STATE OF ALABAMA

LEE COUNTY

The Court Reporter having certified that the reproduction of State's Exhibit No. 5 is difficult or impractical, I hereby attach said State's Exhibit No. 5 to this page of the transcript and certify the same as a part of the record.

Corinne Hurst
Corinne Hurst, Circuit Clerk
Lee County



0109

Forensic Pediatric Clinic

Name: Lillian Mclees
DOB: 5-11-91

City: Chesapeake
MR#: 446273
MA#: 225302

Date: 4-13-01

History of Presentation

Lillian was referred for a forensic evaluation by CPS in conjunction with an ongoing police investigation in Alabama. According to CPS, Lillian's younger sister has had a previously abnormal genital exam. It was noted however, by the doctor, that her injury was consistent with a straddle injury. Lillian and her younger sister have disclosed chronic vaginal/rectal penetration by mother's former fiancé.

Social History

History provided by maternal step-grandmother, Princess Hepner. She states that Lillian and two siblings have lived with her since 6/99. She reports Lillian's mother lives locally with a new husband. Ms. Hepner states she has concerns with her step-daughter's judgment and feels the girls need the stability and support she can provide. Ms. Hepner reports developmental and age appropriate behaviors, however Lillian has a history of extreme mood swings and aggressiveness when touched. These issues have been effectively addressed in psychotherapy and do resurface on occasion. She states Lillian is a good student and does not experience behavioral problems in the school setting. It was reported by CPS that Lillian and her younger sister made a pact to not speak to anyone of their abuse.

Sandra Fernandez, MSW

Past Medical History

History is obtained from Ms. Hepner. Grandmother states that Lillian is a medically healthy child. She has had no serious illnesses and no surgeries. She is on no medications and has no allergies to medications. She is seen regularly by her primary care provider. Grandmother has noted no problems with vaginal discharge or bleeding. There has been no constipation or diarrhea. She has not exhibited any somatic complaints such as headaches or stomachaches.

Grandmother does state that within the past year Lilly has had problems with aggression and mood swings. She also had a period where she was grinding her teeth approximately three years ago. Grandmother states that she has done some lying and stealing recently as well. She was also in therapy with a therapist here in town until recently.

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STATE'S
EXHIBIT

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Physical Examination

Lilly is a very pleasant cooperative nine year eleven month old white female in no distress. She preferred to be unaccompanied during the examination. Also present was our clinic nurse. Vital signs: Respiration 20, pulse 73, blood pressure 104/46, weight 31.3 kg, 50th percentile, height 131cm, 25th percentile. Pupils are equally round and reactive to light, extraocular movements are intact. Nose and throat are clear. Dentition is normal. Tympanic membranes are normal bilaterally. Neck is supple with shotty anterior lymphadenopathy. Lungs are clear to auscultation bilaterally. Cardiovascular exam regular rate and rhythm without murmur, pulses are 2+ and equal. Abdomen is soft without hepatosplenomegaly. Bowel sounds are positive. Musculoskeletal: good strength and tone in extremities. Neurologically, cranial nerves 2-12 appear to be intact, reflexes are 2+ and equal bilaterally. Skin: Other than a mild sunburn on her arms bilaterally, her skin is clear.

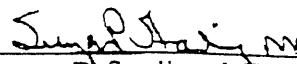
Genitalia: Lilly is a Tanner stage I female. She was examined in the supine frog leg position with colposcopy as a diagnostic aid. Her labia majora and minora are normal bilaterally. Her hymen is very thin and translucent. It shows two openings separated by a small tissue band. The margins of both openings are crisp without evidence of trauma. There are also prominent bilateral peri-urethral bands. The posterior fourchette and fossa navicularis are both normal. Her anus has a tag in the twelve o'clock position. Otherwise there are no tears, lesions or fissures in her anal area.

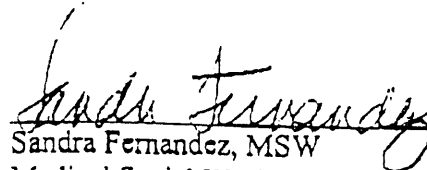
Assessment

1. Lilly has a normal genital examination. A normal exam neither confirms nor excludes the possibility of sexual contact.
2. There are allegations of penile anal and penile vaginal penetration that Lilly and her sister have disclosed to CPS.

Plan

1. Colposcopic photographs were taken.
2. The results of the examination were discussed with Lilly's grandmother.
3. Lilly has an appointment at the Child Abuse Program for therapeutic intervention.
4. A copy of this report will be forwarded to the Chesapeake authorities for further investigation.


 Suzanne P. Starling, MD
 Medical Director, Child Abuse Program


 Sandra Fernandez, MSW
 Medical Social Worker

OCT 11 2006

SPS/lj

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 CIRCUMSTANCE.

STATE OF ALABAMA

LEE COUNTY

The Court Reporter having certified that the reproduction of State's Exhibit No. 4 is difficult or impractical, I hereby attach said State's Exhibit No. 4 to this page of the transcript and certify the same as a part of the record.

Corinne Hurst
Corinne Hurst, Circuit Clerk
Lee County



Forensic Pediatric Clinic

Name: Autumn Mclees
DOB: 11-4-92

City: Chesapeake
MR#: 700759
MA#: 225301

Date: 4-13-01

History of Presentation

Autumn was referred for a forensic evaluation by CPS in conjunction with an ongoing police investigation in Alabama. According to CPS, Autumn had a previous genital exam in 1998 completed in Alabama with abnormal findings. It was noted however, by the doctor that the "split vagina" was consistent with a straddle injury. Autumn and her older sister have disclosed chronic vaginal/rectal penetration by mother's former fiancé.

Social History

History provided by maternal step-grandmother, Princess Hepner. She states Autumn and two siblings have lived with her since 6/99. She reports Autumn's mother lives locally with a new husband. Ms. Hepner states she has concerns with her step-daughter's judgment and feels the girls need the stability and support she can provide. Ms. Hepner reports developmental and age appropriate behaviors, however Autumn has a tendency to become depressed and cry excessively. She states Autumn is a good student and does not experience behavioral problems in the school setting. It is reported by CPS that Autumn and her older sister made a pact to not speak to anyone concerning their abuse.

Sandra Fernandez, MSW

Past Medical History

History is obtained from Ms. Hepner. Grandmother states that Autumn was a full term birth without complications. She has been a relatively healthy child. She is on no medications and has no allergies to medications. She has never had a serious illness or overnight hospitalization. Grandmother does state that she was seen in approximately 1998 for a genital injury. She states that Autumn had told the physicians that she had straddled a balance beam, but that grandmother believes this was the presentation of her abusive episode. She states that at that emergency room visit that she had a "jagged tear" in her genitals that the physicians apparently attributed to the straddle injury. Other than this injury she has had no further injuries or Emergency Department visits.

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Grandmother states that she is otherwise healthy. She does have some environmental allergies. She has had occasional episodes of vaginal discharge but no bleeding. She has had mild constipation but no diarrhea. She complains of frequent stomachaches. She has had occasional nightmares that have really not increased in number over the past several years. Grandmother describes her as very withdrawn with excess crying and fearfulness. Her grandmother states that she is the more withdrawn of the two siblings.

Physical Examination

Autumn is a very pleasant and cooperative eight year five month old white female in no distress. She is accompanied in the examination by her grandmother. Also present in the exam was our nurse. Vital signs: Respiration 22, pulse 89, blood pressure 105/51, weight 32.1 kg, 75th percentile, height 122.5 cm, 25th percentile. Pupils are equally round and reactive to light, extraocular movements are intact. Nose and throat are clear. Dentition is normal. Tympanic membranes are normal bilaterally. Neck is supple with shotty anterior lymphadenopathy. Lungs are clear to auscultation bilaterally. Cardiovascular exam regular rate and rhythm without murmur, pulses are 2+ and equal. Abdomen is soft without hepatosplenomegaly. Bowel sounds are positive. Musculoskeletal: good strength and tone in extremities. Neurologically, cranial nerves 2-12 appear to be intact, reflexes are 2+ and equal bilaterally. Skin: Autumn has a healing abrasion of her left elbow, and a sunburn on the back of her neck. Otherwise her skin examination is normal. Genitalia: Autumn is a Tanner stage I female. She was examined in the supine frog leg position with colposcopy as a diagnostic aid. She has normal labia majora and minora. She has a hyperpigmented area on the clitoral hood which appears to be a freckle. She has a significantly abnormal hymen. There is a scant amount of hymenal tissue present from approximately two to a four o'clock. The hymen is absent between four and seven. There is a small amount of hymenal tissue between seven and nine. In the five to six o'clock position there is an avascular area that is consistent with a scar. This area extends from the margin of the vagina through the hymen into the fossa navicularis. There is also an avascular area in the posterior fourchette. There is a vaginal column that is clearly seen in the six o'clock position. This column appears to be transected by the avascular area as well. There are very prominent peri-urethral bands bilaterally. Her anus has good tone. There are no tags, tears, fissures or other lesions in the anal area.

Assessment

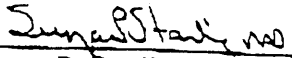
1. Autumn has a very abnormal genital examination. She has a complete lack of hymenal tissue at the base. Additionally, there is an avascular area consistent with a scar that extends from the distal vagina into the posterior fourchette. This injury is consistent with a penetrating injury to the genitals. It is consistent with her stated history of penile vaginal penetration.
2. According to CPS, Autumn has given a history of penile vaginal penetration as well as penile anal penetration.

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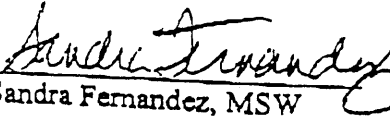
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Plan

1. Colposcopic photographs were taken.
2. The results of the examination were discussed with Autumn's mother.
3. Autumn has an appointment at the Child Abuse Program for therapeutic intervention.
4. A copy of this report will be forwarded to the Chesapeake authorities for further investigation.


Suzanne P. Starling, MD
Medical Director, Child Abuse Program

SPS/lj


Sandra Fernandez, MSW
Medical Social Worker

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OCT 11 2001

VOLUME ONE
STATE OF ALABAMA
IN THE CIRCUIT COURT FOR THE COUNTY OF LEE
THIRTY-SEVENTH JUDICIAL CIRCUIT
CRIMINAL

STATE OF ALABAMA,

PLAINTIFF,

VS.

CASE NOS. CC-01-1001
CC-01-1002
CC-01-1003
CC-01-1004

WILLIAM LEE KIRBY,

DEFENDANT

REPORTER'S OFFICIAL TRANSCRIPT OF
INDEX AND EXHIBITS

Before:

HON. ROBERT M. HARPER, Circuit Judge, in
Courtroom Number Four of the Lee County Justice Center
located at Opelika, Alabama, on the 3rd of December, 2001,
and being concluded on the 4th day of December, 2001.

A P P E A R A N C E S

HON. VANCE NICHOLAS ABBETT, District Attorney for the
37th Judicial Circuit of Alabama, and HON. DAVID GLANZER,
Assistant District Attorney for the 37th Judicial Circuit
of Alabama, appearing for the State of Alabama.

HON. KENNETH FUNDERBURK: Attorney at Law, appearing
for the Defendant.

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DEFENDANT'S EXHIBITS AT TRIAL:

NUMBER	MARKED	RECEIVED
1	206	206

STATE OF ALABAMA
IN THE CIRCUIT COURT FOR THE COUNTY OF LEE
THIRTY-SEVENTH JUDICIAL CIRCUIT
CIVIL

STATE OF ALABAMA,

PLAINTIFF,

VS.

CASE NOS. CC-01-1001
CC-01-1002
CC-01-1003
CC-01-2004

WILLIAM LEE KIRBY,

DEFENDANT

REPORTER'S OFFICIAL TRANSCRIPT OF THE
TRIAL IN CHIEF BEFORE THE COURT AND JURY

Before:

HON. ROBERT M. HARPER, Circuit Judge, in the
Courtroom Number Four of the Lee County Justice Center
located at Opelika, Alabama, on the 3rd of December, 2001,
and being concluded on the 4th day of December, 2001.

A P P E A R A N C E S

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37th Judicial Circuit of Alabama, and HON. DAVID GLANZER,
Assistant District Attorney for the 37th Judicial Circuit
of Alabama, appearing for the State of Alabama.

HON. KENNETH FUNDERBURK, Attorney at Law, appearing
for the Defendant.

P R O C E E D I N G S

(WHEREUPON, the following proceedings were
had and done out of the jury venire's
presence and hearing, to-wit:)

THE COURT: State versus Kirby. Which case does
the State intend to proceed on?

MR. GLANZER: The State has already consolidated
all four. There's two child victims, two charges each
case and they're out of Virginia, so we wanted to take
care of all of that at once. And I believe the Court
has already consolidated them?

MR. FUNDERBURK: Yes, sir.

THE COURT: All right. Do you have proposed voir
dire questions you want to ask?

MR. GLANZER: Yes, sir.

MR. FUNDERBURK: Yes, sir.

THE COURT: Let me see what you've got.

All right. The State's requested voir dire,
I would strike 4, 10 and 12. If you want to be heard
on that I'll listen to you.

Do you have some, Mr. Funderburk?

MR. FUNDERBURK: You struck 4, 10 and 12?

THE COURT: Right.

MR. GLANZER: 4, 10 and 12?

THE COURT: Right.

1 MR. FUNDERBURK: Your Honor, the only different
2 one I have written out here is whether, this is a case
3 where there may be a difference in the physical
4 testimony and the testimony -- the physical evidence
5 and the testimony of the child. I need to know if
6 anyone would be, would tend to believe a child's
7 testimony even if it doesn't agree with the physical
8 testimony.

9 THE COURT: Well, that's an argumentative
10 question. I don't think I'd let you ask that, not in
11 that form anyway.

12 MR. FUNDERBURK: Okay.

13 THE COURT: Do you have any other questions you
14 want to ask?

15 MR. FUNDERBURK: No, sir, not different than what
16 I've seen on his list.

17 THE COURT: Okay. So that's all you -- so you
18 don't have anything to ask then?

19 MR. FUNDERBURK: No, sir.

20 THE COURT: Okay.

21 MR. FUNDERBURK: Do you read the questions or do
22 you, do we --

23 THE COURT: You ask them yourself, but you don't
24 have any to ask.

25 MR. FUNDERBURK: Well, that was the main one.

1 THE COURT: Now the main one, this is the time if
2 you've got any voir dire questions, now is the time
3 that you run them by me. I'm not going to let you ask
4 anything that I haven't pre-cleared.

5 MR. FUNDERBURK: Okay. Well, let me run down the
6 list, I think it's covered here, but I'll run down
7 them anyway.

8 I want to ask the jury if they've ever had
9 a child tell them a fib or make believe things to
10 them. Essentially if they've ever had a child tell
11 them a fib.

12 THE COURT: Well, that's not going to elicit
13 anything. Everybody knows that a kid is going to tell
14 you a fib every once in a while. I'll deny that one.

15 MR. FUNDERBURK: Okay. I was going to ask them
16 if any of them believe that it's possible to have
17 vaginal penetration and rectal penetration without
18 leaving some physical evidence.

19 THE COURT: That kind of question, all that does
20 is generate questions to try to explain, try to find
21 out what you're talking about. I don't think you need
22 to ask that question. I think that's a matter of
23 evidence that -- so I'm not going to let you ask that
24 question.

25 MR. FUNDERBURK: I think the final one, and Your

1 Honor usually asks this question but in case you don't
2 I was going to ask if any of the venire believe that
3 they could not be fair in a child abuse case for any
4 reason, even though they would not want to express --

5 THE COURT: You can ask that.

6 MR. FUNDERBURK: -- to the Court.

7 THE COURT: You can ask that.

8 MR. FUNDERBURK: All right. That would be my
9 only question then.

10 THE COURT: Okay. Anything else by either side
11 then?

12 MR. FUNDERBURK: I have one dealing with, what my
13 client wants to do this morning, whether he wants to
14 be pro se or --

15 THE COURT: Well, that's up to you and the
16 client, so you need to talk to him.

17 MR. FUNDERBURK: Give me two seconds and let me
18 see if he can tell me. I've been waiting for a while.

19 THE COURT: All right. These four cases involve
20 two different victims?

21 MR. GLANZER: Two victims. Sodomy is one and
22 rape is one. And one is about two years older than
23 the other.

24 THE COURT: All right.

25 MR. GLANZER: As far as their ages.

1 THE COURT: Okay.

2 MR. GLANZER: We did file a motion for the child
3 hearsay exception and we didn't do those hearings
4 before --

5 THE COURT: How old are the alleged victims?

6 MR. GLANZER: Now they're probably say in the
7 area of maybe 8 and 10, but they were probably 5 and
8 7 at the time.

9 MR. FUNDERBURK: 6 and 8, something like that,
10 Judge, during the time. The statements were given,
11 what, 8 and 10, ages 8 and 10?

12 MR. GLANZER: Uh-huh (affirmative response.)

13 THE COURT: Okay. Anything else? Let me know,
14 otherwise, they'll be qualifying the jury in the other
15 courtroom. And we'll come back in here and get
16 started.

17 MR. FUNDERBURK: All right. Could I take two
18 minutes and see? I've been informed that I was not
19 the attorney, but --

20 THE COURT: Well, you go talk to them. If
21 there's any problem that comes up you let me know and
22 I'll come back out here and deal with it.

23 MR. FUNDERBURK: All right. Thank you.

24 (WHEREUPON, proceedings were in a brief
25 recess, after which the following occurred,

1 to-wit:)_

2 MR. FUNDERBURK: Your Honor, it's my
3 understanding that they want another lawyer and not
4 me, but I guess I'll let him explain what else he
5 wants.

6 THE COURT: You're Mr. Kirby?

7 THE DEFENDANT: Yes, sir. We were seeking to get
8 another lawyer, because what he was wanting me to do
9 was to plead to something I did not do. And I have
10 not done this and I don't think it would be right for
11 me to plead to something, you know, that I'm innocent
12 on. We had talked to another lawyer and we was going
13 to fire him Monday or Tuesday. We just felt like
14 we're being misrepresented because we had evidence
15 we've brought to him. It's been lost. Had to get it
16 back up and bring back. I've been up here at hearings
17 before you at nine o'clock in the morning and you
18 asked me where my lawyer was and I couldn't tell you
19 and I had to stay the whole day until one and have
20 someone else sent up here from their firm. None of
21 the eyewitnesses, character witnesses have been
22 contacted at all, none. Nobody is ready for this
23 case. And I've just found this out.

24 THE COURT: Mr. Kirby, this case has been pending
25 a while. You hired a lawyer, I guess it was your

1 father that came up here Friday and told me that you
2 had a problem with your lawyer. Now you do not get a
3 case continued because you fire a lawyer on the
4 morning of trial. It doesn't work that way.

5 THE DEFENDANT: Well, would you --

6 THE COURT: Listen to me. If you wanted another
7 lawyer you should have decided to do this weeks ago
8 and hired him and had him ready to try the case today.
9 Now we have witnesses that have been brought in from
10 out of state, is that not true?

11 MR. GLANZER: Yes, sir.

12 THE COURT: This case is going to be tried today,
13 with or without a lawyer. So you'll either have Mr.
14 Funderburk or some other lawyer that comes in here
15 this morning or you'll try it by yourself. But the
16 case will not be continued because you want to fire a
17 lawyer. It just does not work that way. If I let any
18 criminal defendant come up here on the morning of
19 trial and fire his lawyer and I continued the case, I
20 wouldn't get any cases tried, because that would be a
21 real easy way to get cases put off. It simply doesn't
22 work that way.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So you need to go talk to Mr.
25 Funderburk and see if you want him to represent you or

1 you want to represent yourself. It will be either one
2 way or the other.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right?

5 THE DEFENDANT: Yes, sir.

6 (WHEREUPON, proceedings were in a brief
7 recess, after which the following occurred,
8 to-wit:)

9 MR. GLANZER: The child hearsay hearings, we've
10 got Brenda Moss up here that has statements from both
11 of them.

12 THE COURT: Well, we'll do that after we get the
13 jury empaneled. We'll wait and do that at that point.

14 (WHEREUPON, proceedings were in a brief
15 recess, after which the following
16 proceedings were had and done in the jury
17 venire's presence and hearing, to-wit:)

18 THE COURT: Good morning, ladies and gentlemen.
19 I'm Judge Harper, I'll add my welcome to that of Judge
20 Walker. We're happy to have you here this morning.

21 We'll be trying criminal cases this week.

22 All right. The Court is calling for trial
23 the case of State versus William Lee Kirby, cases
24 number 1003, 04, 1001 and 02. Now, ladies and
25 gentlemen, these are four separate charges against the

1 Defendant, William Lee Kirby that have been
2 consolidated for trial. And I'm going to read these
3 indictments to you first and then I'll ask you some
4 questions. So please give me your attention while I
5 do that.

6 The first indictment says this: The Grand
7 Jury of Lee County charge that before the finding of
8 this indictment William Lee Kirby whose true Christian
9 name is otherwise unknown to the Grand Jury, did
10 engage in deviant sexual intercourse with Lillian J.
11 McLees, who was less than twelve years of age. He,
12 the said William Lee Kirby being sixteen years of age
13 or older, in violation of Section 13A-6-63 of the Code
14 of Alabama, against the peace and dignity of the State
15 of Alabama. This indictment charges the offense of
16 sodomy in the first degree.

17 The second indictment reads as follows: The
18 Grand Jury of Lee County charge that before the
19 finding of this indictment William Lee Kirby whose
20 true Christian name is otherwise unknown to the Grand
21 Jury, did engage in deviant sexual intercourse with
22 Autumn Rose McLees, who was less than twelve years of
23 age, he the said William Lee Kirby being sixteen years
24 of age or older, in violation of Section 13A-6-63 of
25 the Code of Alabama, against the peace and dignity of

1 the State of Alabama. This indictment also charges
2 the offense of sodomy in the first degree.

3 The third indictment reads as follows: The
4 Grand Jury of Lee County charge that before the
5 finding of this indictment William Lee Kirby whose
6 true Christian name is otherwise unknown to the Grand
7 Jury, a male, did engage in sexual intercourse with
8 Autumn Rose McLees, a female, who was less than twelve
9 years of age, he the said William Lee Kirby, being
10 sixteen years or older, in violation of Section 13A-6-
11 61 of the Code of Alabama, against the peace and
12 dignity of the State of Alabama. This indictment
13 charges the offense of rape in the first degree.

14 The final indictment reads as follows: The
15 Grand Jury of Lee County charge that before the
16 finding of this indictment William Lee Kirby whose
17 true Christian name is otherwise unknown to the Grand
18 Jury, a male, did engage in sexual intercourse with
19 Lillian J. McLees, a female, who was less than twelve
20 years of age, he the said William Lee Kirby being
21 sixteen years or older, in violation of Section 13A-6-
22 61 of the Code of Alabama, against the peace and
23 dignity of the State of Alabama. And this indictment
24 charges the offense of rape in the first degree.

25 The Defendant has entered pleas of not

1 guilty to each of these charges and that brings the
2 case here for you, the jury, to try.

3 Now, I'm going to ask you some qualifying
4 questions, ladies and gentlemen. The oath that Judge
5 Walker gave you this morning will apply to your
6 answers to these questions. If any of the questions
7 apply to you it's very important that you let us know.
8 If any of the questions that I ask or any of the
9 attorneys ask call for information that's personal or
10 you don't want to answer out loud for any reason, I'll
11 give you a chance to come up here and reply quietly at
12 the bench. We don't want to embarrass anyone. But
13 otherwise, if the question applies to you just let me
14 know by raising your hand.

15 Have any of you been indicted within the
16 last twelve months for the offenses of sodomy in the
17 first degree or rape in the first degree?

18 (No responses.)

19 THE COURT: Were any of you a member of the Grand
20 Jury which indicted this Defendant, and that's the
21 Grand Jury that met on, in October of this year?

22 (No responses.)

23 THE COURT: Do any of you have any interest in
24 either the conviction or the acquittal of this
25 Defendant?

1 (No responses.)

2 THE COURT: Do you know anything about this case
3 that would effect your ability to serve as a juror in
4 any way?

5 (No responses.)

6 THE COURT: Has anyone talked to you about this
7 case?

8 (No responses.)

9 THE COURT: Do any of you have a fixed opinion as
10 to the guilt or the innocence of this Defendant?

11 (No responses.)

12 THE COURT: Are any of you a surety on the
13 Defendant's bond?

14 (No responses.)

15 THE COURT: Do any of you have a fixed opinion
16 against penitentiary punishment?

17 (No responses.)

18 THE COURT: Do any of you think that a conviction
19 should not be had on circumstantial evidence?

20 (No responses.)

21 THE COURT: Are any of you related by blood or
22 marriage to the Defendant or do you know him, William
23 Lee Kirby?

24 Mr. Kirby, would you stand and face the
25 jury, please?

1 (Defendant complying.)

2 (No responses.)

3 THE COURT: All right. You may be seated.

4 Are any of you related by blood or marriage
5 or do you know either of the alleged victims, the
6 first is Lillian J. McLees, that's M-C-L-E-E-S?

7 (No responses.)

8 THE COURT: And the other is Autumn Rose McLees?

9 (No responses.)

10 THE COURT: Did Judge Walker qualify on the
11 D.A.'s?

12 MR. GLANZER: Yes, sir.

13 THE COURT: All right. Are any of you related to
14 or do you know or are you clients of the attorney for
15 the Defendant, Kenneth Funderburk from Phenix City?

16 (No responses.)

17 MR. ABBETT: He asked if anybody knew my staff.
18 I don't know if he asked if anybody was related. I
19 don't think anybody --

20 THE COURT: Are any of you related to the
21 District Attorney, Nick Abbett, or to any member of
22 his staff, David Glanzer, or any of the others that he
23 mentioned this morning?

24 (No responses.)

25 THE COURT: Do any of you have any reason at all

1 that you think you could not serve as an impartial
2 juror in the trial of these cases?

3 (One response.)

4 THE COURT: Yes, sir? Mr. Pink, come up just a
5 minute.

6 (WHEREUPON, the following proceedings were
7 had and done at the bench, in the presence
8 of the jury venire but out of its hearing,
9 to-wit:)

10 THE COURT: Michael Pink?

11 VENIRE MEMBER PINK: Yes, sir. I work for the
12 OPD and I'm familiar with a lot of this through the
13 police department.

14 THE COURT: Okay. I'm going to excuse you from
15 this case. You need to call in on the code-a-phone
16 after five.

17 VENIRE MEMBER PINK: All right.

18 THE COURT: We'll take Mr. Pink, 49, off.

19 (WHEREUPON, the following proceedings
20 were had and done in the jury venire's
21 presence and hearing, to-wit:)

22 THE COURT: Anyone else?

23 (No responses.)

24 THE COURT: All right. Now, the lawyers have the
25 right to ask you some additional questions to secure

1 information that will assist them in selecting this
2 jury, ladies and gentlemen. What I've said with
3 reference to my questions applies to theirs, so please
4 give them your attention. Mr. Glanzer?

5 MR. GLANZER: As mentioned earlier, my name is
6 David Glanzer, I work for Nick Abbett. We're
7 prosecuting this case. I'm going to ask, all these
8 questions are kind of related, but it's going to have
9 to do with child victims and sex acts, but keep in
10 mind the victims at the time of this act were around
11 five to six for one and about seven to eight years old
12 for the other. So when I ask these just put it in
13 that terms.

14 Does anyone feel that the presumption of
15 innocence or burden of proof should be higher or lower
16 because this is a case involving child rape and/or
17 sodomy? Do you think the criminal justice system
18 should treat the case any differently?

19 (No responses.)

20 MR. GLANZER: Does anyone have experience through
21 courses or work with sexual abnormalities?

22 (No responses.)

23 MR. GLANZER: Will anyone here have any
24 difficulty in sitting and listening to testimony from
25 a young child concerning matters of a graphic sexual

1 nature?

2 (No responses.)

3 MR. GLANZER: Everybody can sit and listen to it
4 and be objective?

5 (No responses.)

6 MR. GLANZER: Does anyone here have any
7 difficulty with my asking questions concerning graphic
8 sexual acts to the witnesses?

9 (No responses.)

10 MR. GLANZER: Is there anyone who feels because
11 there may be testimony of a graphic and sexual nature
12 that you might be inclined to turn off and not listen
13 to the questions or answers concerning such testimony?
14 Again, stay open and listen?

15 (No responses.)

16 MR. GLANZER: Has anyone here been the victim of
17 sexual abuse or have a close friend or family member
18 who has, and if you want to just tell the Judge, that
19 will be fine.

20 THE COURT: Yeah, you can wait and tell me that
21 up here at the bench if any of you want to.
22 Otherwise, you can answer it. You've got a hand
23 there.

24 MR. GLANZER: Okay. What's your name? Oh, do
25 you want to go up to the Judge? Okay.

1 THE COURT: Okay.

2 MR. GLANZER: Just hold it and then when we get
3 through we'll do that. And then, on any of these
4 questions if somebody wants to just tell the Judge,
5 feel free and at the end just go up there.

6 Has anyone ever reported a case of possible
7 sexual abuse?

8 (No responses.)

9 MR. GLANZER: Do you or a close friend or family
10 member have a background or training in nursing,
11 medicine, child care or emergency medicine?

12 (Several hands raised.)

13 MR. GLANZER: Some names? Okay.

14 VENIRE MEMBER COX: Sonya Cox. My aunt is an RN.

15 VENIRE MEMBER BULLEY: Cheryl Bulley, and I'm an
16 RN.

17 VENIRE MEMBER HENDEN: Jeanine Henden, my
18 daughter-in-law is an RN.

19 VENIRE MEMBER SHAVERS: Rhonda Shavers, and I'm
20 an RN.

21 VENIRE MEMBER CHANCE: Linda Chance, and my
22 mother is a retired LPN.

23 VENIRE MEMBER JERNIGAN: Deborah Jernigan, I'm an
24 RN.

25 VENIRE MEMBER SMITH: Jodie Cook, and I have

1 several relatives that are RN's and LPN's.

2 A VENIRE MEMBER: I have a son that's an RN.

3 MR. GLANZER: And what was your name?

4 A VENIRE MEMBER: Jay Taylor.

5 MR. GLANZER: And somebody else down there?

6 VENIRE MEMBER BUGHAM: Trent Bugham, I've got two
7 first cousins and a mother-in-law that is an RN and in
8 the pharmacy in the hospital.

9 A VENIRE MEMBER: My wife is a nurse.

10 MR. GLANZER: And what is your name?

11 A VENIRE MEMBER: Rick Phillips, Richard
12 Phillips.

13 MR. GLANZER: Okay. Anybody over here?

14 (No further responses.)

15 MR. GLANZER: Would anyone automatically believe
16 an adult over a child who testifies?

17 (No responses.)

18 MR. GLANZER: Is there anyone here who is a
19 member in any group or organization that advocates on
20 behalf of the crime victims?

21 (No responses.)

22 MR. GLANZER: Is there anyone here who is a
23 member of any group or organization that advocates on
24 behalf of domestic violence or sexual abuse victims or
25 is a member of the Rape Crisis organization or a

1 victim counseling program?

2 (No responses.)

3 MR. GLANZER: Is there anyone here who is a
4 member of any group or organization that advocates on
5 behalf of those accused of crimes and that in our
6 correctional system, such as prisoner rights groups or
7 legal services or prison ministries or ACLU and stuff
8 like that?

9 A VENIRE MEMBER: My sister is a clinical
10 psychologist that deals with abused children. I don't
11 know if that's relevant.

12 MR. GLANZER: Anybody else?

13 A VENIRE MEMBER: I'm a pastor and I do have
14 visits, you know --

15 MR. GLANZER: What was your name again?

16 VENIRE MEMBER WILLIAMSON: Russell Williamson.

17 MR. GLANZER: Prison ministry and that type
18 thing?

19 VENIRE MEMBER WILLIAMSON: (Nodding
20 affirmatively.)

21 MR. GLANZER: Is there anyone who is a member of
22 a group or organization that has as its goals, a
23 purpose, or as part of its agenda changing the laws of
24 our criminal justice system or the laws in the area of
25 sexual assault, the law of age of consent or the

1 operation of our correctional systems?

2 (No responses.)

3 MR. GLANZER: Let me approach. I've got one
4 question I need to --

5 (WHEREUPON, the following proceedings were
6 had at the bench, in the presence of the
7 jury venire but out of its hearing, to-
8 wit:)

9 MR. GLANZER: To know who's a parent and who's
10 not, as far as having children.

11 THE COURT: You mean young children or older?

12 MR. GLANZER: Just had children sometime in their
13 life. As far as young children, is what I'm really
14 looking for.

15 THE COURT: All right.

16 (WHEREUPON, the following proceedings were
17 had and done in the jury venire's presence
18 and hearing, to-wit:)

19 MR. GLANZER: And this might be easier to ask
20 from the reverse direction. How many have never had
21 small children?

22 What's your name?

23 A VENIRE MEMBER: Katherine Temple.

24 MR. GLANZER: Temple?

25 A VENIRE MEMBER: Glenn Howard.

1 A VENIRE MEMBER: Pat Dowdell.

2 MR. GLANZER: Anybody else?

3 (No further responses.)

4 MR. GLANZER: All righty. Nothing further.

5 THE COURT: Mr. Funderburk?

6 MR. FUNDERBURK: Good morning, ladies and
7 gentlemen. My name is Kenneth Funderburk and I just
8 have one additional question other than those you've
9 already heard. And it's part of what you've already
10 heard.

11 I need to know if any of you believe that
12 you could not serve in a case like this where there's
13 a child abuse charge, for any reason, for either
14 reasons you've already given or any reason you'd like
15 to tell the Judge outside the presence of the public.
16 So if you have any reasons whether it's stated or not
17 at this point why you could not serve or feel like you
18 could not serve on a child abuse case, if you would
19 just raise your hand and we'll deal with it that way.

20 I have one, two.

21 Your Honor, could they speak to you?

22 THE COURT: Yeah. All right. Ladies and
23 gentlemen, if you have any responses to any of these
24 questions, if you'll move to the sides I'll bring you
25 up one at a time.

1 (WHEREUPON, the following proceedings were
2 had at the bench, inside the presence of
3 the jury venire, but out of its hearing,
4 to-wit:)

5 THE COURT: Yes, sir, tell me your name?

6 A VENIRE MEMBER: Kenneth Howard.

7 THE COURT: Howard? Yes, sir. What did you want
8 to tell me?

9 VENIRE MEMBER HOWARD: I was sexual abused when
10 I was a little kid, sir.

11 THE COURT: Okay. Do you think that would make
12 it difficult for you to serve as a juror in this case?

13 VENIRE MEMBER HOWARD: Yes, sir.

14 THE COURT: All right. I'm going to excuse you,
15 Mr. Howard. I appreciate you coming. If you'll call
16 in on the code-a-phone it will tell you when we need
17 you back.

18 VENIRE MEMBER HOWARD: Okay. Thank you, sir.

19 THE COURT: Good morning. Tell me your name?

20 A VENIRE MEMBER: Jodie Cook.

21 THE COURT: Ms. Cook? What did you want to tell
22 me?

23 VENIRE MEMBER COOK: I have a first cousin that
24 was accused and served time for raping his daughter.

25 THE COURT: Your ex-husband?

1 VENIRE MEMBER COOK: First cousin.

2 THE COURT: First cousin. Okay. Do you think
3 that would effect your ability to serve as a juror in
4 any way?

5 VENIRE MEMBER COOK: I'm afraid it might.

6 THE COURT: Okay. Ms. Cook, I'm going to excuse
7 you and ask you to call in on the code-a-phone and it
8 will tell you when we need you back.

9 VENIRE MEMBER COOK: Okay.

10 THE COURT: We'll excuse Ms. Cook, number eleven.

11 VENIRE MEMBER COOK: Thank you.

12 THE COURT: Good morning. Tell me your name?

13 A VENIRE MEMBER: Frank Piper.

14 THE COURT: All right. Mr. Piper, what did you
15 want to tell me?

16 VENIRE MEMBER PIPER: I have got four grand kids,
17 Judge, I don't know if I can sit there and listen to
18 him or not. Two of them are little girls and my
19 sister lives with abused kids on a daily basis, some
20 of them raped, some of them just physical abuse. And
21 I talk to her on a regular basis.

22 THE COURT: Do you think that would make it
23 difficult for you to be objective in this case and
24 decide it?

25 VENIRE MEMBER PIPER: It would be very difficult.

1 It's one of the worst crimes you can do as far as I'm
2 concerned.

3 THE COURT: Okay. I'm going to excuse you from
4 this case and ask you to call in on the code-a-phone
5 after five today and it will tell you when we need you
6 back. All right?

7 VENIRE MEMBER PIPER: All right.

8 THE COURT: Mr. Piper is excused.

9 (WHEREUPON, the following proceedings were
10 had and done in the presence and hearing of
11 the jury venire, to-wit:)

12 THE COURT: Anyone else have anything they need
13 to tell me about this?

14 (No responses.)

15 THE COURT: We'll be selecting this jury, ladies
16 and gentlemen. That usually takes around twenty-five,
17 maybe thirty minutes. So I'm going to let you go back
18 over to the jury assembly room and we will send for
19 you as soon as the jury is selected. So you may go at
20 this time.

21 (WHEREUPON, the jury venire retired from
22 the courtroom and the following proceedings
23 were had and done out of its presence and
24 hearing, to-wit:)

25 THE COURT: All right. We will, after we select

1 this jury we will let them go to lunch and I'll have
2 the hearing on the victims' statements. So any
3 witnesses that you need here for that purpose you
4 need to go ahead and round up and have them here by
5 about 11:15 or so. Anything else?

6 (WHEREUPON, Court and counsel struck a jury
7 without the presence of the court reporter,
8 after which the following occurred in the
9 presence and hearing of the jury venire,
10 to-wit:)

11 THE COURT: When your name is called, ladies and
12 gentlemen, please come around and have a seat in the
13 jury box.

14 (WHEREUPON, the Clerk called the jury to
15 the jury box.)

16 THE COURT: I'll give you the oath that's
17 required, ladies and gentlemen. Please raise your
18 right hands.

19 (Jury duly sworn.)

20 THE COURT: I'm going to let you step out with
21 the bailiff for just a minute. I'll get you right
22 back in very shortly.

23 (WHEREUPON, the jury retired from the
24 courtroom and the remaining jury venire
25 members were dismissed, after which the

1 following occurred, to-wit:)

2 THE COURT: All right. I'm going to bring the
3 jury back and let them go until, let's see, this
4 hearing will take about how long?

5 (WHEREUPON, the jury returned to the
6 courtroom and the following occurred in its
7 presence and hearing, to-wit:)

8 THE COURT: Ladies and gentlemen, I've got some
9 legal matters to take up with the lawyers in this case
10 before we get started, so I'm going to let you go to
11 lunch early and ask you to be back here at 1:15. We
12 should be able to get through with everything we need
13 to do between now and then and have a short time for
14 lunch for the folks here in the case.

15 Now we have an arrangement that you can park
16 on the sides of the building so you do not have to
17 come back through the metal detector and through the
18 lobby. Most jurors prefer to do it that way. And the
19 bailiff will show you what we do. Now, what you'll do
20 is when you come back after lunch you'll park on the
21 north side of the building. That's the side closest
22 to the hospital. And he'll have a side door there
23 that you can come in and out of. And when you come
24 back come back up here to the second floor to the jury
25 room that's right behind you. And when you get back

1 about 1:15 we should be ready to go at that time. So
2 Mr. Jones will show you where that is and we'll take
3 you right out that door. You may go.

4 (WHEREUPON, the jury retired from the
5 courtroom and the following proceedings
6 were had and done out of its presence and
7 hearing, to-wit:)

8 THE COURT: All right. The jury is out of the
9 courtroom. Now, what's is the State expecting to do
10 under this statute? Is this going to be a situation
11 under (1) or (2A) of Section 15-25-32? In other
12 words, is the child going to testify here in court or
13 not?

14 MR. GLANZER: Yes, sir. We are going to have
15 both children in here to testify, but we do want to
16 get to their hearsay statements, particular Brenda
17 Moss who was the forensic interviewer that interviewed
18 both of those children. And then they made, one of
19 the children in particular, made a brief statement to
20 Dr. Anz.

21 THE COURT: Okay.

22 MR. GLANZER: So we want to get to both of those.

23 THE COURT: All right. Call your first witness.

24 MR. GLANZER: Brenda Moss.

25 Valerie did indicate that Dr. Anz may be

1 able to make it here by 11:35.

2 THE COURT: All right.

3 BRENDA MOSS,

4 a witness, having first been duly sworn to speak the truth,
5 the whole truth and nothing but the truth, was examined and
6 testified as follows, to-wit:

7

8 DIRECT EXAMINATION

9 By Mr. Glanzer:

10 Q. What is your name?

11 A. Brenda Moss.

12 Q. And where are you employed?

13 A. The Child Advocacy Center of East Alabama.

14 Q. And what kind of duties do you perform for them?

15 A. I'm the forensic interviewer.

16 Q. And what kind of education and training do you have to
17 perform those duties?

18 A. I have a BS degree in family and child development and
19 I have 26 years experience as a law enforcement
20 investigator and I've been working at the center for three
21 years.

22 Q. And during that three year period approximately how
23 many children have you interviewed?

24 A. Approximately 250.

25 Q. And have you previously testified in cases in this

1 particular county?

2 A. Yes, I have.

3 Q. And approximately how many times?

4 A. During law and enforcement and this probably 50 or 75
5 times.

6 Q. Okay. We would offer as an expert for the purposes of
7 her child interviews, interviewing child victims.

8 THE COURT: All right.

9 MR. FUNDERBURK: For the record, we would object.

10 THE COURT: Objection overruled.

11 Q. Brenda, did you have an opportunity to interview two
12 children back on June 25th of 2001 by the name of Autumn
13 McLees and Lillian McLees?

14 A. I did.

15 Q. And at that time was Autumn approximately 8 years old
16 and Lillian 10 years old?

17 A. That's correct.

18 Q. And did they report incidents that occurred to them
19 while they lived in Louisiana?

20 A. Yes, they did.

21 Q. And how did you get called into this investigation?

22 A. I received a referral from the department, Lee County
23 Department of Human Resources.

24 Q. And let me specifically go to the interviews. Were
25 they both conducted on June 25th, 2001?

1 A. Yes, they were.

2 Q. And were they conducted separately, each child was
3 interviewed separately?

4 A. Yes, they were.

5 Q. And was anybody else present in the room while you
6 interviewed the child, each child?

7 A. No. Just myself and the child.

8 Q. Okay. And in each of these cases did each of them
9 appear to have personal knowledge of the event?

10 A. Yes, they did.

11 Q. In other words, they were the victims, correct?

12 A. That's correct.

13 Q. And at the time I think we indicated that one was 8
14 and one was 10. Did their maturity levels seem consistent
15 with their age?

16 A. Yes, it did.

17 Q. And did they, they weren't reporting things that were
18 hearsay, they were, it was based on their own knowledge of
19 things that had occurred; correct?

20 A. That's correct.

21 Q. And were you able to determine any apparent motive why
22 the child would report these things, such as any bias or
23 corruption or coercion, like family members or anyone else
24 or law enforcement or DHR that would have caused them to
25 report something that was false?

1 A. No, I did not.

2 Q. Did anyone else hear them make the statement, I know
3 you've indicated that you interviewed them alone, but were
4 there other people present who heard them make this report
5 to you?

6 A. Yes, Detective Shane Healy from the Opelika Police
7 Department.

8 THE COURT: Who?

9 THE WITNESS: Shane Healy. And Yarbi Cound from
10 the Lee County Department of Human Resources were
11 present in the observation room.

12 THE COURT: Tell me that name again?

13 THE WITNESS: Yarbi, Y-A-R-B-I, Cound, C-O-U-N-D.

14 Q. Were any of these people -- well, let me ask you
15 before that, were any of the parents or family members
16 present also?

17 A. No.

18 Q. You mentioned Shane and Yarbi Cound, did they have any
19 effect on the interview, such as being able to enter the
20 room and ask any questions or pass anything on or talk to
21 you while you were doing this?

22 A. They did not during the interview.

23 Q. Did you determine whether the child was suffering from
24 any obvious illnesses or mental disorders or anything that
25 would have prevented them from being able to talk to you

1 and present their story to you?

2 A. There did not appear to be any of those conditions.

3 Q. They appeared to be coherent?

4 A. Yes.

5 Q. And were they able to describe abuse over an extended
6 period as opposed to a single incident?

7 A. It was over an extended period of time.

8 Q. In their statements did they appear to be responsive
9 to the questions you were asking?

10 A. Yes, they were.

11 Q. And appropriate --

12 A. Age appropriate, very much, yes.

13 Q. Did you suggest anything in any way through your
14 questioning technique?

15 A. No, I did not.

16 Q. And how did you question them?

17 A. I basically began with open ended questions after I
18 had some rapport building time with the child, with each
19 child. And began asking if they knew why they were at the
20 center to talk to me. They each told why they were there.
21 And basically just asking them, you know, tell me what all
22 happened. Tell me everything you can remember that
23 happened.

24 Q. And then just follow up on anything that they said?

25 A. Right.

1 Q. Was this recorded in any fashion?

2 A. I was taking notes during the interview.

3 Q. At sometime later did you convert those notes to a
4 report?

5 A. Yes, I did.

6 Q. Okay. And you have those with you today?

7 A. I do.

8 MR. GLANZER: Judge, that's all we have at this
9 point.

10 THE COURT: Cross.

11 CROSS EXAMINATION

12 BY MR. FUNDERBURK:

13 Q. I have a copy of the forensic interview for Autumn and
14 one for Lillian. Both of those were done on 6-25-01. The
15 written statement that you've made, do you have a copy of
16 that?

17 A. Yes, I do.

18 Q. Now, were any substantive matters, that is related to
19 these charges, the rape or the sodomy, were any statements
20 made concerning the rape and the sodomy that is not
21 included in your written statement?

22 A. No.

23 Q. Now before you interviewed the two girls, did you
24 review other statements made on March 21 and the doctor's
25 examination which had been conducted in Virginia?